

GJSK180012082025



**IN THE COURT OF 2nd ADDITIONAL SESSIONS
JUDGE, SABARKANTHA AT IDAR.**

C. M.A DC No.21 of 2025.

Exh.:13

**Applicants :- Legal Heirs of Deceased Thakarda
Shamalbhai Revabhai**
1. Thakarda Inshwarbhai Shamalbhai
2. Thakarda Kantibhai Shamalbhai
3. Thakarda Ramjibhai Shamalbhai
4. Thakarda Pankajbhai Shamalbhai
Aged:- 47 years, Occupation:-
Resi. Of:- Nava Rehvas, Taluka:- Rehvas,
District:- Sabarkantha

Versus

Opponents:- 1. Patel Motibhai Raichandbhai
2. Patel Mahendrabhai Ramjibhai
3. Legal Heirs of Deceased Patel Ramjibhai
Raichandbhai
3.1 Jiviben Wd/o Ramjibhai Patel
3.2 Mahendrabhai Ramjibhai Patel
3.3. Rakeshbhai Ramjibhai Patel
3.4 Sushilaben D/0 Ramjibhai Patel
All Resi. Of:- Mudeti Kampa,
Taluka:- Idar, District:- Sabarkantha

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Appearance:-

Mr. B. B. Desai	Ld. Advocates for the Applicants
None	Ld. Advocate for the Opponent No. 1 & 2
Mr. M. S. Balospura	Ld. Advocate for the Opponent No. 3

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**Delay Condonation Application
Under Section 5 of the Limitation Act.**

:: J U D G M E N T ::

1. The present application has been preferred by the applicants seeking condonation of **47 days** delay in filing the application for condonation of delay in preferring the restoration application against the order on dated 12.09.2025 passed in CMA (DC) No. 13 of 2022.
2. It is submitted by applicants that R. C. A. No. 3 of 2018 came to be dismissed for default on dated 09.08.2018 on the ground of want of prosecution in the absence of the parties. The applicants thereafter preferred a restoration application along with a delay condonation application, bearing No. 15 of 2021. The said application had been allowed on dated 20.06.2022 upon payment of costs of Rs. 2,000/- and registry has registered the restoration application as CMA-DC No. 13 of 2022. Thereafter, the said application came to be dismissed for default on dated 17.09.2025 on the ground of want of prosecution due to the absence of the parties as well as advocates. Thereafter, the applicants approached the Hon'ble High Court of Gujarat by filing Special Civil Application No. 14420 of 2025. The said petition came to be withdrawn on dated 15.10.2025 with liberty to file an appeal from order. Pursuant thereto, appeal from order No. 219 of 2025 was filed on dated 16.10.2025. It is further submitted that applicants approached the higher forum without delay. Since, the applicant approached the higher forum without delay. Since the applicants, with bona fide intention, diligently prosecuted the proceedings before the Hon'ble High Court

of Gujarat at Ahmedabad, the applicants are entitled to the benefit of Section 14 of the Limitation Act, 1963. It is further submitted that there was inaction on the part of the advocate representing the applicants, the applicants ought not to be made to suffer for the same. It was the duty of the advocate to remain present before the Court, however, due to his failure to appear, the matter came to be dismissed for default. The settled legal position is that a litigant should not be penalised for the lapses or inaction of his advocates. It is further submitted that there are strong and substantial grounds in the main appeal and the applicant has a fair and reasonable chance of succeeding therein. If the delay in filing the present applicant, as well as in seeking restoration of CMA DC No. 13 of 2022 is not condoned, the applicant will be deprived of the statutory right of appeal. It is further submitted that there is no lethargy, negligence, or mala fide intention in not prosecuting the appeal. Therefore, Hon'ble Court may be pleased to impose reasonable costs, if deemed appropriate. Lastly he prays that to condone the delay of 47 days in filing condonation of delay with CMA DC 13 of 2022 and quash and set aside the order below Exh.1 passed on dated 12.09.2025. to condone. In support of his argument and submission, the Ld. Advocate for the applicants relied upon the following judgments of the Hon'ble Supreme Court which are as under:-

- 1. 1196 (0) AIJEL-HC 209969, in case of Rajendra M. Mavani Vs. State of Gujarat, decided on dated*

19.09.1996 in Special Civil Appeal No. 5242 of 1996 by the Hon'ble Gujarat High Court..

2. 2024 (0) AIJEL-HC 249886, in case of Malde Veja Karavadra (Mer) @ Malde Veja Jivan Hothi Vs. Ramabhai Veja Karavadra (Mer) @ Ramesh Veja Hothi, decided on dated 04.07.2024 in Special Civil Appeal No. 3229 of 2018 by the Hon'ble Gujarat High Court.

3. 1991(0) AIJEL-HC 213118, in case of Trushteas of Surat Parsi Panchayat Funds and Properties Trust Vs. Ketan Textile, decided on dated 29.08.1991 in Special Civil Appeal No. 575 of 1977 by the Hon'ble Gujarat High Court.

3. On filing this application the notices to the opponents were issued. In response to said notice, Ld. Advocate for the opponent No.3 appeared before this Court but not filed any reply or objection against the said application.
4. I have carefully perused the record of the case. I have also considered the rival submissions advanced by the learned Advocates for the respective parties and have gone through the judgments relied upon by the learned Advocate for the applicants. Now looking to the legal aspects, the ***Hon'ble Supreme Court*** and our ***Hon'ble High Court*** in many decisions, time and again held that the approach of the court should be liberal in considering the delay condonation applications. Considering the facts and circumstances of the case and the reasons assigned for the delay, which have been satisfactorily explained by the Ld. Advocate for the applicants. Further, the Ld. Advocate for the applicants has relied upon various judgments of

Hon'ble Supreme Court, the same are not discussed in detail herein, as they are already available on record and a detailed discussion is not considered necessary for deciding the present application and also to save the precious time of the Court. Hence, without adopting any hyper-technical view, I deem it fit to condone the delay in filing the delay application for restoration Application with costs. Thus I pass following order.

:: O R D E R ::

1. The present C.M.A DC is hereby "**allowed**".
2. Delay of **47 Days** caused in filing the application for condonation of delay in preferring the restoration application against the order passed by the Court on dated **12.09.2025** in **CMADC No. 13 of 2022** is hereby "**condoned**" subject to deposit cost of **Rs. 5,000/- (Rupees Five Thousand Only) in T.L.S.A Idar.**
3. Upon payment of the aforesaid costs, the Registry is hereby directed to register and number the restoration application accordingly for its adjudication.

Signed and pronounced in the open Court on 3rd day of August- 2026.

Date : 03.08.2026
Place: Idar.
//kts//

(M.Y.Radhanpurwala)
GJ00734
2nd Additional District Judge
Sabarkantha @Idar.